

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEVEN CABRAL,

Plaintiff,

v.

STONE CONTAINER
CORPORATION,

Defendant.

C.A. No. 04-CV-11961 MEL

**DEFENDANT, STONE CONTAINER CORPORATION'S
ANSWER TO PLAINTIFF'S COMPLAINT**

1. Defendant, Stone Container Corporation ("Stone") is without knowledge or information sufficient to form a belief with respect to the allegations of Paragraph 1 of the Complaint.
2. Stone admits the allegations contained in Paragraph 2 of the Complaint.
3. Stone admits the allegations contained in Paragraph 3 of the Complaint.
4. Stone denies the allegations contained in Paragraph 4 of the Complaint.
5. Stone admits the allegations contained in Paragraph 5 of the Complaint.

COUNT I

6. Paragraph 6 calls for a legal conclusion to which no response is required. To the extent Paragraph 6 contains factual allegations against Stone, Stone denies those allegations.
7. Stone denies the allegations contained in Paragraph 7 of the Complaint.
8. Stone denies the allegations contained in Paragraph 8 of the Complaint.
9. Stone denies the allegations contained in Paragraph 9 of the Complaint.
10. Stone denies the allegations contained in Paragraph 10 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's injuries were caused in whole or in part by the negligence of the Plaintiff to such a degree that the Plaintiff's claim is barred or his right of recovery is otherwise reduced by virtue of the provisions of Massachusetts General Laws, Chapter 231, Section 85.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff's injuries were not proximately caused by any act or failure to act by Stone.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's injuries are not the result of any act or omission of a person for whose conduct the Defendant was legally responsible.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's injuries were caused by a superceding, intervening cause for which Stone cannot be held responsible.

FIFTH AFFIRMATIVE DEFENSE


To the extent Stone owed any duty to the Plaintiff, such duty has been fully, completely and properly performed in every respect.

SIXTH AFFIRMATIVE DEFENSE

Stone reserves the right to supplement the foregoing Affirmative Defenses to the extent allowed by law and to the extent that additional defenses are revealed during discovery.

THE DEFENDANT DEMANDS A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE

The Defendant,
STONE CONTAINER CORPORATION,
By its attorneys,



Peter G. Hermes, BBO No. 231840
John R. Felice, BBO No. 644517
HERMES, NETBURN,
O'CONNOR, & SPEARING, P.C.
111 Devonshire Street
Boston, MA 02109-5407
(617) 728-0050
(617) 728-0052 (F)

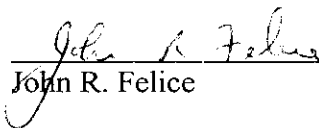
Dated: *September 14, 2004*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served by first class mail, postage prepaid, on the following counsel of record:

Amy M. Donovan, Esq.
Law Offices of Dane M. Shulman
25 Newport Avenue Extension, 1st Floor
North Quincy, MA 02171

Date: *9/14/04*


John R. Felice

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PLCV2004-01024
Cabral v Stone Container Corp

File Date	08/18/2004	Status	Disposed: transfered to other court (dtrans)
Status Date	09/09/2004	Session	A - Civil A - CtRm 4 (Brockton)
Origin	1	Case Type	B03 - MV negligence/pers injury/prop dmg
Lead Case		Track	F

Service	11/16/2004	Answer	01/15/2005	Rule 12/19/20	01/15/2005
Rule 15	01/15/2005	Discovery	06/14/2005	Rule 56	07/14/2005
Final PTC	08/13/2005	Disposition	10/12/2005	Jury Trial	Yes

PARTIES

Plaintiff Steven Cabral 12 Deer Hill Lane Plymouth, MA 02360 Active 08/18/2004	Private Counsel 655490 Amy M Donovan 25 Newport Avenue Extension 1st floor North Quincy, MA 02171 Phone: 617-471-3200 Active 08/18/2004 Notify
Defendant c/o CT Corp System Stone Container Corp 101 Federal Street Boston, MA 02101 Service pending 08/18/2004	Private Counsel 644517 John R Felice Hermes Netburn O'Connor & Sommerville 111 Devonshire Street 8th floor Boston, MA 02109-5407 Phone: 617-728-0050 Fax: 617-728-0052 Active 09/13/2004 Notify

ENTRIES

Date	Paper	Text
08/18/2004	1.0	Complaint & civil action cover sheet filed and Jury Claim (chk 275.00 recvd)
08/18/2004		Origin 1, Type B03, Track F.
09/09/2004	2.0	Case REMOVED this date to US District Court of Massachusetts by deft Stone Container Corporation Atty John R. Felice

EVENTS

A TRUE COPY ATTEST

James R. Fawcett
CLERK

County of Plymouth
The Superior Court

Plymouth, ss

CIVIL DOCKET# PLCV2004-01024-A

RE: **Cabral v Stone Container Corp**

TO: Amy M Donovan, Esquire
25 Newport Avenue Extension
1st floor
North Quincy, MA 02171

SEP 15 P 1:45

PLACED IN COURT
SEP 15 2004 MASS

TRACKING ORDER - F TRACK

You are hereby notified that this case is on the **fast (F) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

Service of process made and return filed with the Court	11/16/2004
Response to the complaint filed (also see MRCP 12)	01/15/2005
All motions under MRCP 12, 19, and 20 filed	01/15/2005
All motions under MRCP 15 filed	01/15/2005
All discovery requests and depositions completed	06/14/2005
All motions under MRCP 56 served and heard	07/14/2005
Final pre-trial conference held and firm trial date set	08/13/2005
Case disposed	10/12/2005

The final pre-trial deadline is **not the scheduled date of the conference**. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session **A** sitting in CtRm 4 (72 Belmont Street, Brockton) at **Plymouth Superior Court**.

Dated: 08/18/2004

Francis R. Powers
Clerk of the Courts

BY: John C. Barr
Assistant Clerk

Location: CtRm 4 (72 Belmont Street, Brockton)
Telephone: (508) 583-8250 ext. 305

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

Check website as to status of case: <http://ma-trialcourts.org/tcic>

cvdtrac_2.wpd 419173 inidoc01 mullinsj

[Handwritten signature]

A TRUE COPY ATTEST

[Handwritten signature of Francis R. Powers]
Francis R. Powers
Clerk

8-18-04

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

PLYMOUTH SUPERIOR COURT
CIVIL ACTION NO: 04-1024A

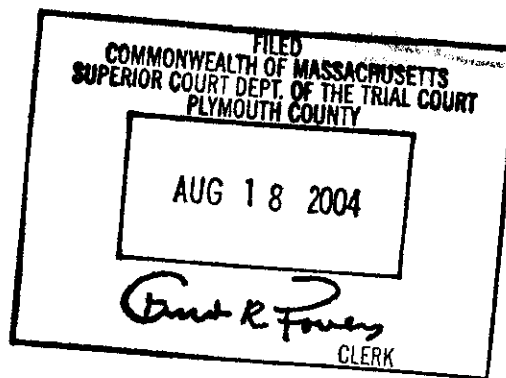
STEVEN CABRAL,
Plaintiff

vs.

COMPLAINT & JURY CLAIM

STONE CONTAINER CORPORATION,
Defendant

PARTIES



- ck 275 60
1. The Plaintiff, Steven Cabral, is an adult Massachusetts resident, currently residing at 12 Deer Hill Lane, Plymouth, MA, Plymouth County.
 2. The Defendant, Stone Container Corporation, is a corporation duly licensed to do business in the Commonwealth, having it's principal office located at 150 N. Michigan Avenue, Chicago, IL.
 3. The Defendant, Stone Container Corporation, has a local registered agent, CT Corporation System located at 101 Federal Street, Boston, Ma.
 4. The Defendant, is also known as Smurfit Stone Container Corporation in the Commonwealth located at 47 Maple Street, Mansfield, Ma.

FACTS

5. On or about August 20,2001, the Plaintiff, Steven Cabral, was on the premises of the Defendant's Massachusetts business.

A TRUE COPY ATTEST
Clerk R. Fowles
CLERK


COUNT I

6. At all times material to this action the Defendant, it's agents and/or employees had a duty to carefully and properly load Plaintiff's truck.
7. The Defendant, it's agents and/or employees, knew or should have known that its failure to properly load Plaintiff's truck created an unreasonable danger to the Plaintiff.
8. On or about August 20, 2004 the Defendant, it's agents and/or employees breached this duty by negligently and carelessly loading contents into Plaintiff's truck.
9. As a result of said negligence; the Plaintiff was caused to suffer an accident when the contents of the truck fell on him as he opened the truck doors.
10. As a result of the incident described in this Complaint, the Plaintiff was caused to suffer personal injuries, was caused to suffer great pain of body and mind, was caused to incur expenses for her medical treatment and was prevented from attending to the duties of his occupation.

WHEREFORE, the Plaintiff demands judgment against the Defendant; that damages be established and Plaintiff be awarded same along with the costs, interest and reasonable attorney's fees.

JURY CLAIM: the Plaintiff demands trial by jury on all claims.

BY PLAINTIFF'S ATTORNEY


LAW OFFICES OF DANE M. SHULMAN
Amy M. Donovan, Esquire
25 Newport Avenue Extension, 1st Floor
North Quincy, MA 02171
(617) 471-3200
B.B.O. # 655490



PLAINTIFF(S)

Steven Cabral

DEFENDANT(S)

Stone Container Corporation

INSTRUCTIONS: THIS FORM MUST BE COMPLETED AND FILED WITH THE COMPLAINT OR OTHER INITIAL PLEADING IN MIDDLESEX AND NORFOLK COUNTIES - SUPERIOR COURT: IN ALL CIVIL ACTIONS, DISTRICT COURT: IN ALL CIVIL ACTIONS SEEKING MONEY DAMAGES.

COUNTY: Plymouth☐ Middlesex☐ Norfolk

SUPERIOR COURT:

☐ Cambridge☐ Lowell☐ Dedham

DISTRICT COURT:

Division

TORT CLAIMS

AMOUNT

A. Documented medical expenses to date:

1. Total hospital expenses:

\$ 1,821.00

2. Total doctor expenses:

\$ 920.00

3. Total chiropractic expenses:

\$ 6,265.54

4. Total physical therapy expenses:

\$ 3,928.005. Total other expenses (Describe): Expenses for x ray, 3 MRI, and\$ 6,875.00Prescriptions

SUBTOTAL:

\$ 17,972.1

B. Documented lost wages and compensation to date:

\$ 3,235.9

C. Documented property damages to date:

\$ _____

D. Reasonably anticipated future medical and hospital expenses:

\$ _____

E. Reasonably anticipated lost wages:

\$ 42,433.5

F. Other documented items of damage (Describe): _____

\$ _____

G. Brief description of Plaintiff's injury, including nature and extent of injury (Describe): B03
Plaintiff injured at Defendant's premises when large container
fell on him. Plaintiff suffered torn rotator cuff (R) which
required surgery. Plaintiff also suffered sprain to his
neck.

\$ 75,000.00

For this form, disregard double or treble damage claims; indicate single damages only.

TOTAL:

\$ 138,641.66

CONTRACT CLAIMS

AMOUNT

Provide a detailed description of claim(s): _____

\$ _____

\$ _____

\$ _____

For this form, disregard double or treble damage claims; indicate single damages only.

TOTAL:

\$ _____

ATTORNEY FOR PLAINTIFF (OR PRO SE PLAINTIFF):

DEFENDANT'S NAME AND ADDRESS:

Signature

Date

Print or Type Name

B.B.O.#

Address

8-18-04

Law Offices of

Dane M. Shulman

First Floor

25 Newport Avenue Extension
North Quincy, Massachusetts 02171

Tel: (617) 471-3200

Fax: (617) 769-7020

August 16, 2004

Dane M. Shulman, Esq.
Jody C. Shulman, Esq.
Sheldon S. Ananian, Esq.
Michael P. Kambouris, Esq.

Neal E. Shulman
Business Manager

www.daneshulman.com

Lisa T. Cooper, Esq.
Joseph T. Desmond, Esq.
Amy M. Donovan, Esq.
Lisa B. Friedberg, Esq.
Susan S. Miller, Esq.
Joy I. Moussouttas, Esq.
Daniel E. Pogoda, Esq.
David Rodibaugh, Esq.
Monica L. Shearer, Esq.
Michael F. Suarez, Esq.
Angela K. Troccoli, Esq.
Stephen E. Woods, Esq.

Office of the Civil Clerk
Plymouth Superior Court
72 Belmont Street
Brockton, MA 02301

RE: *Steven Cabral vs. Stone Container Corporation*
Plymouth Superior Court
Civil Action No:

Dear Sir or Madam:

Enclosed herewith, please find the Complaint, Statement of Damages, filing fee, and docketing card.

Kindly place the docket number on the docketing card, as well as the date said Complaint was filed and then return same to me at your earliest convenience so that I may have each Defendant served.

Thank you for your prompt attention to this matter.

Very truly yours,
LAW OFFICES OF DANE M. SHULMAN


Amy M. Donovan
AMD/klm

Encls.

PLAINTIFF(S)

Steven Cabral

DEFENDANT(S)

Stone Container Corporation

INSTRUCTIONS: THIS FORM MUST BE COMPLETED AND FILED WITH THE COMPLAINT OR OTHER INITIAL PLEADING IN MIDDLESEX AND NORFOLK COUNTIES - SUPERIOR COURT: IN ALL CIVIL ACTIONS, DISTRICT COURT: IN ALL CIVIL ACTIONS SEEKING MONEY DAMAGES.

COUNTY: Plymouth☐ Middlesex☐ Norfolk

SUPERIOR COURT:

☐ Cambridge☐ Lowell☐ Dedham

DISTRICT COURT:

Division

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AMOUNT

A. Documented medical expenses to date:

1. Total hospital expenses: \$ 1,821.00
 2. Total doctor expenses: \$ 920.00
 3. Total chiropractic expenses: \$ 6,265.54
 4. Total physical therapy expenses: \$ 3,928.00
 5. Total other expenses (Describe): Expenses for x ray, 3 MRI, and \$ 6,875.00
Prescriptions

SUBTOTAL:

\$ 17,972.00

B. Documented lost wages and compensation to date:

\$ 3,235.00

C. Documented property damages to date:

\$ _____

D. Reasonably anticipated future medical and hospital expenses:

\$ _____

E. Reasonably anticipated lost wages:

\$ 42,433.50

F. Other documented items of damage (Describe):

\$ _____

G. Brief description of Plaintiff's injury, including nature and extent of injury (Describe):

Plaintiff injured at Defendant's premises when large container
fell on him. Plaintiff suffered torn rotator cuff (R) which
required surgery. Plaintiff also suffered sprain to his
neck.

\$ 75,000.00

For this form, disregard double or treble damage claims; indicate single damages only.

TOTAL:

\$ 138,641.66

CONTRACT CLAIMS

AMOUNT

Provide a detailed description of claim(s):

\$ _____

\$ _____

\$ _____

For this form, disregard double or treble damage claims; indicate single damages only.

TOTAL:

\$ _____

ATTORNEY FOR PLAINTIFF (OR PRO SE PLAINTIFF):

Signature [Signature] Date 08/18/04

Print or Type Name Amy M. Donovan B.B.O.# 655490

Law Offices of Dan M. Shulman
25 Newport Avenue Ext.

Address No. Quincy, MA 02171

DEFENDANT'S NAME AND ADDRESS:

Stone Container Corporation

C/O CT Corporation System

101 Federal Street

Boston, MA

▪ Dane M. Shulman, Esq.
Jody C. Shulman, Esq.
Sheldon S. Ananian, Esq.
Michael P. Kambouris, Esq.

Neal E. Shulman
Business Manager

www.daneshulman.com

Law Offices of
Dane M. Shulman
First Floor
25 Newport Avenue Extension
North Quincy, Massachusetts 02171
Tel: (617) 471-3200
Fax: (617) 769-7020

August 18, 2004

Lisa T. Cooper, Esq.
Joseph T. Desmond, Esq.
Amy M. Donovan, Esq.
Lisa B. Friedberg, Esq.
Susan S. Miller, Esq.
Joy I. Moussouttas, Esq.
Daniel E. Pogoda, Esq.
David Rodibaugh, Esq.
Monica L. Shearer, Esq.
Michael F. Suarez, Esq.
Angela K. Troccoli, Esq.
Stephen E. Woods, Esq.

Office of the Civil Clerk
Plymouth Superior Court
72 Belmont Street
Brockton, MA 02301

RE: *Steven Cabral vs. Stone Container Corporation*
Plymouth Superior Court
Civil Action No:

Dear Sir or Madam:

Enclosed please find the original Statement of Damages regarding the above referenced matter.

Thank you for your prompt attention to this matter.

Very truly yours,
LAW OFFICES OF DANE M. SHULMAN



Amy M. Donovan
AMD/klm

Encls.

5-13	275-		275-	9/8/04	Atty. Marshallman	Complaint	0
TRANSIT NUMBER	CHECK	CASH	NET AMOUNT	DATE	NAME	DESCRIPTION	

PC38356-11-98

THE COMMONWEALTH OF MASSACHUSETTS
CLERK - MAGISTRATE
PLYMOUTH DIVISION
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT
COURTHOUSE, 72 BELMONT ST.
BROCKTON, MA 02401

24374

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. PLCV2004-01024

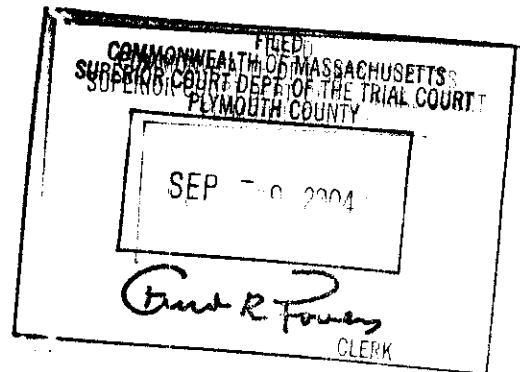
STEVEN CABRAL,

Plaintiff,

v.

STONE CONTAINER
CORPORATION,

Defendant.



NOTICE OF REMOVAL

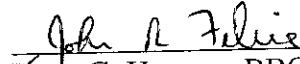
TO: Civil Clerk's Office
Plymouth Superior Court
72 Belmont Street
Brockton, MA 02301

Pursuant to 28 U.S.C. § 1446(d), the Defendant, Stone Container Corporation ("Stone"), hereby gives notice that, in accordance with 28 U.S.C. § 1441, it filed a Notice of Removal of this action from the Plymouth Superior Court to the United States District Court for the District of Massachusetts based upon the fact that the United States District Court for the District of Massachusetts has original jurisdiction over this matter.

A TRUE COPY ATTEST

Clerk R. Fournier
CLERK

The Defendant,
STONE CONTAINER CORPORATION,
By its attorneys,


Peter G. Hermes, BBO No. 231840
John R. Felice, BBO No. 644517
HERMES, NETBURN,
O'CONNOR, & SPEARING, P.C.
111 Devonshire Street
Boston, MA 02109-5407
(617) 728-0050
(617) 728-0052 (F)


Dated: 9/8/04

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served by first class mail, postage prepaid, on the following counsel of record:

Amy M. Donovan, Esq.
Law Offices of Dane M. Shulman
25 Newport Avenue Extension, 1st Floor
North Quincy, MA 02171

Date: 9/8/04


John R. Felice

HERMES, NETBURN, O'CONNOR & SPEARING, P.C.

ATTORNEYS AT LAW
111 DEVONSHIRE STREET, EIGHTH FLOOR
BOSTON, MASSACHUSETTS 02109
TELEPHONE (617) 728-0050
TELECOPIER (617) 728-0052

PETER G. HERMES
PETER C. NETBURN
KEVIN J. O'CONNOR
SCOTT S. SPEARING
ROBERT W. MONAGHAN
GINA A. FONTE
JOHN R. FELICE
MICHAEL S. BATSON
RYAN T. KILLMAN

DIRECT DIAL NUMBER
(617) 210-7780

September 8, 2004

Clerk for Civil Business
Plymouth Superior Court
72 Belmont Street
Brockton, MA 02301

Re: Steven Cabral
v. Stone Container Corporation
Civil Action No. PLCV2004-01024

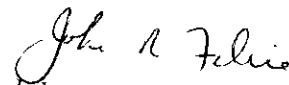
Dear Sir/Madam:

Enclosed for filing is the Defendant's Notice of Removal.

Kindly prepare certified copies of all pleadings so that I may forward them to the United States District Court for District of Massachusetts. If there is a charge for such pleadings, please contact me upon receipt of this letter so that I may forward a check in the appropriate amount.

Thank you for your assistance.

Very truly yours,


John R. Felice

/dk

Amy M. Donovan, Esq.
RP\CLIENTS\Stone Container\Cabral\Correspondence\State Clerk 1.doc